IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.Rev.Pet.No. 2196 of 2007()

CRA.607/2004 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
SC.1001/2001 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

N.K.NITHYANANDAN, S/O.KRISHNAN,
RESIDING AT NALUKANDATHIL HOUSE,
CHELANNUR, KOZHIKODE.

BY ADV. SRI.A.BALAGOPALAN
SRI.RAJAGOPAL G.
SRI.RAJESH R.
SRI.P.B.PRADEEP
SRI.K.SANEESH KUMAR

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

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1. MANOHARAN, S/O.APPUKUTTAN,
VETTIL ESTATE, EDAKKAD P.O.,
KOZHIKODE.

2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2196 OF 2007

Dated this the 21st day of June, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.1001/2001 on the file of the J.F.C.M.-I, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above

finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. I am, however, inclined to modify the sentence imposed on the appellant provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the complainant a sum of Rs.30,000/-(Rupees thirty thousand only) by way of compensation under section 357(3) Cr.P.C. within two months from today instead of the sentence imposed on him by the courts below, then he need only to undergo imprisonment till the rising of the court. If, however, the revision petitioner commits default in making the payment as aforesaid, the sentence imposed on him by the court below shall revive.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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